

1999 ASSEMBLY BILL 318

1 **AN ACT** *to amend* 961.41 (1) (e) (intro.), 961.41 (1m) (e) (intro.), 961.41 (3g) (b),
2 961.41 (3g) (d), 961.41 (3g) (dm), 961.46 (3), 961.465 (2), 961.472 (2), 961.48 (2),
3 961.49 (1) (intro.), 961.55 (1) (d) 3., 971.365 (1) (a), 971.365 (1) (b), 971.365 (1)
4 (c) and 971.365 (2); **to repeal and recreate** 961.41 (1) (e) (intro.), 961.41 (1)
5 (em), 961.41 (1m) (e) (intro.), 961.41 (1m) (em) and 961.41 (3g) (d); and **to create**
6 961.41 (1) (em), 961.41 (1m) (em) and 961.41 (3g) (dm) of the statutes; **relating**
7 **to:** the controlled substance methamphetamine and providing penalties.

Analysis by the Legislative Reference Bureau

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

8 **SECTION 1.** 961.41 (1) (e) (intro.) of the statutes is amended to read:
9 961.41 **(1)** (e) (intro.) Phencyclidine, amphetamine, ~~methamphetamine~~ or
10 methcathinone, or a controlled substance analog of phencyclidine, amphetamine,

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1 methamphetamine or methcathinone, is subject to the following penalties if the
2 amount manufactured, distributed or delivered is:

3 **SECTION 1r.** 961.41 (1) (e) (intro.) of the statutes, as affected by 1999 Wisconsin
4 Acts (Assembly Bill 465) and (this act), is repealed and recreated to read:

5 961.41 (1) (e) *Phencyclidine, amphetamine and methcathinone.* (intro.) If the
6 person violates this subsection with respect to phencyclidine, amphetamine or
7 methcathinone, or a controlled substance analog of phencyclidine, amphetamine or
8 methcathinone, and the amount manufactured, distributed or delivered is:

9 **SECTION 2.** 961.41 (1) (em) of the statutes is created to read:

10 961.41 (1) (em) Methamphetamine or a controlled substance analog of
11 methamphetamine is subject to the following penalties if the amount manufactured,
12 distributed or delivered is:

13 1. Three grams or less, the person shall be fined not less than \$1,000 nor more
14 than \$200,000 and may be imprisoned for not more than 22 years and 6 months.

15 2. More than 3 grams but not more than 10 grams, the person shall be fined
16 not less than \$1,000 nor more than \$250,000 and shall be imprisoned for not less than
17 6 months nor more than 22 years and 6 months.

18 3. More than 10 grams but not more than 50 grams, the person shall be fined
19 not less than \$1,000 nor more than \$500,000 and shall be imprisoned for not less than
20 one year nor more than 22 years and 6 months.

21 4. More than 50 grams but not more than 200 grams, the person shall be fined
22 not less than \$1,000 nor more than \$500,000 and shall be imprisoned for not less than
23 3 years nor more than 22 years and 6 months.

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1 5. More than 200 grams but not more than 400 grams, the person shall be fined
2 not less than \$1,000 nor more than \$500,000 and shall be imprisoned for not less than
3 5 years nor more than 22 years and 6 months.

4 6. More than 400 grams, the person shall be fined not less than \$1,000 nor more
5 than \$1,000,000 and shall be imprisoned for not less than 10 years nor more than 45
6 years.

7 **SECTION 2r.** 961.41 (1) (em) of the statutes, as created by 1999 Wisconsin Act
8 (this act), is repealed and recreated to read:

9 961.41 (1) (em) *Methamphetamine*. If the person violates this subsection with
10 respect to methamphetamine or a controlled substance analog of methamphetamine
11 and the amount manufactured, distributed or delivered is:

12 1. Three grams or less, the person is guilty of a Class F felony.

13 2. More than 3 grams but not more than 10 grams, the person is guilty of a
14 Class E felony.

15 3. More than 10 grams but not more than 50 grams, the person is guilty of a
16 Class D felony.

17 4. More than 50 grams, the person is guilty of a Class C felony.

18 **SECTION 3.** 961.41 (1m) (e) (intro.) of the statutes is amended to read:

19 961.41 (1m) (e) (intro.) Phencyclidine, amphetamine, ~~methamphetamine~~ or
20 methcathinone, or a controlled substance analog of phencyclidine, amphetamine,
21 ~~methamphetamine~~ or methcathinone, is subject to the following penalties if the
22 amount possessed, with intent to manufacture, distribute or deliver, is:

23 **SECTION 3r.** 961.41 (1m) (e) (intro.) of the statutes, as affected by 1999
24 Wisconsin Acts (Assembly Bill 465) and (this act), is repealed and recreated to
25 read:

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1 961.41 **(1m)** (e) *Phencyclidine, amphetamine and methcathinone.* (intro.) If
2 a person violates this subsection with respect to phencyclidine, amphetamine or
3 methcathinone, or a controlled substance analog of phencyclidine, amphetamine or
4 methcathinone, and the amount possessed, with intent to manufacture, distribute
5 or deliver, is:

6 **SECTION 4.** 961.41 (1m) (em) of the statutes is created to read:

7 961.41 **(1m)** (em) Methamphetamine or a controlled substance analog of
8 methamphetamine is subject to the following penalties if the amount possessed, with
9 intent to manufacture, distribute or deliver, is:

10 1. Three grams or less, the person shall be fined not less than \$1,000 nor more
11 than \$200,000 and may be imprisoned for not more than 22 years and 6 months.

12 2. More than 3 grams but not more than 10 grams, the person shall be fined
13 not less than \$1,000 nor more than \$250,000 and shall be imprisoned for not less than
14 6 months nor more than 22 years and 6 months.

15 3. More than 10 grams but not more than 50 grams, the person shall be fined
16 not less than \$1,000 nor more than \$500,000 and shall be imprisoned for not less than
17 one year nor more than 22 years and 6 months.

18 4. More than 50 grams but not more than 200 grams, the person shall be fined
19 not less than \$1,000 nor more than \$500,000 and shall be imprisoned for not less than
20 3 years nor more than 22 years and 6 months.

21 5. More than 200 grams but not more than 400 grams, the person shall be fined
22 not less than \$1,000 nor more than \$500,000 and shall be imprisoned for not less than
23 5 years nor more than 22 years and 6 months.

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1 6. More than 400 grams, the person shall be fined not less than \$1,000 nor more
2 than \$1,000,000 and shall be imprisoned for not less than 10 years nor more than 45
3 years.

4 **SECTION 4r.** 961.41 (1m) (em) of the statutes, as created by 1999 Wisconsin Act
5 (this act), is repealed and recreated to read:

6 961.41 **(1m)** (em) *Methamphetamine*. If the person violates this subsection
7 with respect to methamphetamine or a controlled substance analog of
8 methamphetamine and the amount possessed, with intent to manufacture,
9 distribute or deliver, is:

10 1. Three grams or less, the person is guilty of a Class F felony.

11 2. More than 3 grams but not more than 10 grams, the person is guilty of a
12 Class E felony.

13 3. More than 10 grams but not more than 50 grams, the person is guilty of a
14 Class D felony.

15 4. More than 50 grams, the person is guilty of a Class C felony.

16 **SECTION 5.** 961.41 (3g) (b) of the statutes is amended to read:

17 961.41 **(3g)** (b) Except as provided in pars. (c), (d), (dm), (e) and (f), if the person
18 possesses or attempts to possess a controlled substance or controlled substance
19 analog, other than a controlled substance included in schedule I or II that is a
20 narcotic drug or a controlled substance analog of a controlled substance included in
21 schedule I or II that is a narcotic drug, the person is guilty of a misdemeanor,
22 punishable under s. 939.61.

23 **SECTION 6.** 961.41 (3g) (d) of the statutes is amended to read:

24 961.41 **(3g)** (d) If a person possesses or attempts to possess lysergic acid
25 diethylamide, phencyclidine, amphetamine, ~~methamphetamine~~, methcathinone,

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1 psilocin or psilocybin, or a controlled substance analog of lysergic acid diethylamide,
2 phencyclidine, amphetamine, ~~methamphetamine~~, methcathinone, psilocin or
3 psilocybin, the person may be fined not more than \$5,000 or imprisoned for not more
4 than one year in the county jail or both.

5 **SECTION 6r.** 961.41 (3g) (d) of the statutes, as affected by 1999 Wisconsin Acts
6 (Assembly Bill 465) and (this act), is repealed and recreated to read:

7 961.41 **(3g)** (d) *Certain hallucinogenic and stimulant drugs.* If a person
8 possesses or attempts to possess lysergic acid diethylamide, phencyclidine,
9 amphetamine, methcathinone, psilocin or psilocybin, or a controlled substance
10 analog of lysergic acid diethylamide, phencyclidine, amphetamine, methcathinone,
11 psilocin or psilocybin, the person may be fined not more than \$5,000 or imprisoned
12 for not more than one year in the county jail or both upon a first conviction and is
13 guilty of a Class I felony for a 2nd or subsequent offense. For purposes of this
14 paragraph, an offense is considered a 2nd or subsequent offense if, prior to the
15 offender's conviction of the offense, the offender has at any time been convicted of any
16 felony or misdemeanor under this chapter or under any statute of the United States
17 or of any state relating to controlled substances, controlled substance analogs,
18 narcotic drugs, marijuana or depressant, stimulant or hallucinogenic drugs.

19 **SECTION 7.** 961.41 (3g) (dm) of the statutes is created to read:

20 961.41 **(3g)** (dm) If a person possesses or attempts to possess
21 methamphetamine or a controlled substance analog of methamphetamine, the
22 person may be fined not more than \$5,000 or imprisoned for not more than 2 years
23 or both.

24 **SECTION 7r.** 961.41 (3g) (dm) of the statutes, as created by 1999 Wisconsin Act
25 (this act), is amended to read:

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1 961.41 **(3g)** (dm) *Methamphetamine*. If a person possesses or attempts to
2 possess methamphetamine or a controlled substance analog of methamphetamine,
3 the person may be fined not more than \$5,000 or imprisoned for not more than ~~2~~
4 one year in the county jail or both upon a first conviction and is guilty of a Class I
5 felony for a 2nd or subsequent offense. For purposes of this paragraph, an offense
6 is considered a 2nd or subsequent offense if, prior to the offender's conviction of the
7 offense, the offender has at any time been convicted of any felony or misdemeanor
8 under this chapter or under any statute of the United States or of any state relating
9 to controlled substances, controlled substance analogs, narcotic drugs, marijuana or
10 depressant, stimulant or hallucinogenic drugs.

11 **SECTION 8.** 961.46 (3) of the statutes is amended to read:

12 961.46 **(3)** If any person 17 years of age or over violates s. 961.41 (1) (cm), (d),
13 (e), (em), (f), (g) or (h) by distributing or delivering cocaine, cocaine base, heroin,
14 phencyclidine, lysergic acid diethylamide, psilocin, psilocybin, amphetamine,
15 methamphetamine, methcathinone or any form of tetrahydrocannabinols or a
16 controlled substance analog of any of these substances to a person 17 years of age or
17 under who is at least 3 years his or her junior, any applicable minimum and
18 maximum fines and minimum and maximum periods of imprisonment under s.
19 961.41 (1) (cm), (d), (e), (em), (f), (g) or (h) are doubled.

20 **SECTION 9.** 961.465 (2) of the statutes is amended to read:

21 961.465 **(2)** If a person violates s. 961.41 (1) (cm), (d), (e), (em), (f), (g) or (h) or
22 (1m) (cm), (d), (e), (em), (f), (g) or (h) by delivering, distributing or possessing with
23 intent to deliver or distribute cocaine, cocaine base, heroin, phencyclidine, lysergic
24 acid diethylamide, psilocin, psilocybin, amphetamine, methamphetamine,
25 methcathinone or any form of tetrahydrocannabinols, or a controlled substance

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1 analog of any of these substances, to a prisoner within the precincts of any prison,
2 jail or house of correction, any applicable minimum and maximum fines and
3 minimum and maximum periods of imprisonment under s. 961.41 (1) (cm), (d), (e),
4 (em), (f), (g) or (h) or (1m) (cm), (d), (e), (em), (f), (g) or (h) are doubled.

5 **SECTION 10.** 961.472 (2) of the statutes is amended to read:

6 961.472 (2) Except as provided in sub. (5), if a person pleads guilty or is found
7 guilty of possession or attempted possession of a controlled substance or controlled
8 substance analog under s. 961.41 (3g) (a) 2., (c) ~~or~~, (d) or (dm), the court shall order
9 the person to comply with an assessment of the person's use of controlled substances.
10 The court's order shall designate a facility that is operated by or pursuant to a
11 contract with the county department established under s. 51.42 and that is certified
12 by the department of health and family services to provide assessment services to
13 perform the assessment and, if appropriate, to develop a proposed treatment plan.
14 The court shall notify the person that noncompliance with the order limits the court's
15 ability to determine whether the treatment option under s. 961.475 is appropriate.
16 The court shall also notify the person of the fee provisions under s. 46.03 (18) (fm).

17 **SECTION 11.** 961.48 (2) of the statutes is amended to read:

18 961.48 (2) If any person is charged under sub. (2m) with a 2nd or subsequent
19 offense under this chapter that is specified in s. 961.41 (1) (cm), (d), (e), (em), (f), (g)
20 or (h), (1m) (cm), (d), (e), (em), (f), (g) or (h) or (3g) (a) 2., (c), (d), (dm) or (e), and he
21 or she is convicted of that 2nd or subsequent offense, any applicable minimum and
22 maximum fines and minimum and maximum periods of imprisonment under s.
23 961.41 (1) (cm), (d), (e), (em), (f), (g) or (h), (1m) (cm), (d), (e), (em), (f), (g) or (h) or (3g)
24 (a) 2., (c), (d), (dm) or (e) are doubled. A person convicted of a 2nd or subsequent

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1 offense under s. 961.41 (3g) (c), (d) or (e) is guilty of a felony and the person may be
2 imprisoned in state prison.

3 **SECTION 12.** 961.49 (1) (intro.) of the statutes is amended to read:

4 961.49 (1) (intro.) If any person violates s. 961.41 (1) (cm), (d), (e), (em), (f), (g)
5 or (h) by delivering or distributing, or violates s. 961.41 (1m) (cm), (d), (e), (em), (f),
6 (g) or (h) by possessing with intent to deliver or distribute, cocaine, cocaine base,
7 heroin, phencyclidine, lysergic acid diethylamide, psilocin, psilocybin,
8 amphetamine, methamphetamine, methcathinone or any form of
9 tetrahydrocannabinols or a controlled substance analog of any of these substances
10 and the delivery, distribution or possession takes place under any of the following
11 circumstances, the maximum term of imprisonment prescribed by law for that crime
12 may be increased by 5 years:

13 **SECTION 13.** 961.55 (1) (d) 3. of the statutes is amended to read:

14 961.55 (1) (d) 3. A vehicle is not subject to forfeiture for a violation of s. 961.41
15 (3g) (b), (c), (d), (dm), (e) or (f); and

16 **SECTION 14.** 971.365 (1) (a) of the statutes is amended to read:

17 971.365 (1) (a) In any case under s. 961.41 (1) (cm), (d), (e), (em), (f), (g) or (h)
18 involving more than one violation, all violations may be prosecuted as a single crime
19 if the violations were pursuant to a single intent and design.

20 **SECTION 15.** 971.365 (1) (b) of the statutes is amended to read:

21 971.365 (1) (b) In any case under s. 961.41 (1m) (cm), (d), (e), (em), (f), (g) or (h)
22 involving more than one violation, all violations may be prosecuted as a single crime
23 if the violations were pursuant to a single intent and design.

24 **SECTION 16.** 971.365 (1) (c) of the statutes is amended to read:

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1 971.365 (1) (c) In any case under s. 961.41 (3g) (a) 2., (c), (d), (dm) or (e)
2 involving more than one violation, all violations may be prosecuted as a single crime
3 if the violations were pursuant to a single intent and design.

4 **SECTION 17.** 971.365 (2) of the statutes is amended to read:

5 971.365 (2) An acquittal or conviction under sub. (1) does not bar a subsequent
6 prosecution for any acts in violation of s. 961.41 (1) (cm), (d), (e), (em), (f), (g) or (h),
7 (1m) (cm), (d), (e), (em), (f), (g) or (h) or (3g) (a) 2., (c), (d), (dm) or (e) on which no
8 evidence was received at the trial on the original charge.

9 **SECTION 17m. Nonstatutory provisions.**

10 (1q) RECONCILIATION PROVISION. The amendment of section 961.41 (3g) (dm) of
11 the statutes, as created by this act, the repeal and recreation of section 961.41 (1) (e)
12 (intro.) and (em), (1m) (e) (intro.) and (em) and (3g) (d) of the statutes and SECTION
13 19s (1g), (2h) and (3i) of this act are void unless 1999 Assembly Bill 465 is enacted
14 into law before July 1, 2000, and unless 1999 Assembly Bill 465 affects section
15 961.41 (1) (e) (intro.), (1m) (e) (intro.) and (3g) (d) of the statutes in exactly the same
16 form as shown in 1999 Assembly Bill 465, as passed by the assembly.

17 **SECTION 18. Initial applicability.**

18 (1) The treatment of sections 961.41 (3g) (b), 961.46 (3), 961.465 (2), 961.472
19 (2), 961.48 (2), 961.49 (1) (intro.), 961.55 (1) (d) 3. and 971.365 (1) (a), (b) and (c) and
20 (2) of the statutes, the amendment of section 961.41 (1) (e) (intro.), (1m) (e) (intro.)
21 and (3g) (d) of the statutes and the creation of section 961.41 (1) (em), (1m) (em) and
22 (3g) (dm) of the statutes first apply to offenses committed on the effective date of this
23 subsection.

24 (2r) The amendment of section 961.41 (3g) (dm) of the statutes, as created by
25 this act, and the repeal and recreation of section 961.41 (1) (e) (intro.) and (em), (1m)

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1 (e) (intro.) and (em) and (3g) (d) of the statutes first apply to offenses committed on
2 the effective date of this subsection.

3 **SECTION 19s. Effective dates.** This act takes effect on the day after
4 publication, except as follows:

5 (1g) If 1999 Assembly Bill 465 has been enacted on or before the day after
6 publication of this act and the day after publication of this act is on or before
7 December 31, 1999, the amendment of section 961.41 (3g) (dm) of the statutes, as
8 created by this act, the repeal and recreation of section 961.41 (1) (e) (intro.) and (em),
9 (1m) (e) (intro.) and (em) and (3g) (d) of the statutes and SECTION 18 (2r) of this act
10 take effect on December 31, 1999.

11 (2h) If 1999 Assembly Bill 465 has been enacted on or before the day after
12 publication of this act and the day after publication of this act is after
13 December 31, 1999, the amendment of section 961.41 (3g) (dm) of the statutes, as
14 created by this act, the repeal and recreation of section 961.41 (1) (e) (intro.) and (em),
15 (1m) (e) (intro.) and (em) and (3g) (d) of the statutes and SECTION 18 (2r) of this act
16 take effect on the day after publication of this act.

17 (3i) If 1999 Assembly Bill 465 is enacted after the day after publication of this
18 act but before July 1, 2000, the amendment of section 961.41 (3g) (dm) of the
19 statutes, as created by this act, the repeal and recreation of section 961.41 (1) (e)
20 (intro.) and (em), (1m) (e) (intro.) and (em) and (3g) (d) of the statutes and SECTION
21 18 (2r) of this act take effect on December 31, 1999, or on the date that the treatment
22 of section 961.41 (1) (e) (intro.), (1m) (e) (intro.) and (3g) (d) of the statutes by 1999
23 Assembly Bill 465 takes effect, whichever is later.

24

(END)